

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

HINTON M. WATERS,)	
)	
<i>Petitioner,</i>)	
)	
v.)	No. 3:10-cv-46
)	
)	
UNITED STATES OF AMERICA,)	
)	
<i>Respondent.</i>)	

MEMORANDUM

Petitioner Hinton M. Waters ("Waters") has filed a petition for writ of *audita querela* pursuant to the All Writs Act, 28 U.S.C. § 1651. For the following reasons, the petition will be **DENIED** and this action **DISMISSED**.

Waters was convicted by a jury of various charges related to a conspiracy to mail bombs and threatening correspondence to Knox County District Attorney General Randy Nichols. He was sentenced to life in prison plus a consecutive term of 51 years. Petitioner's convictions were affirmed on direct appeal. *United States v. Waters*, No. 95-6088, 1996 WL 495017 (6th Cir. August 29, 1996) (unpublished decision).

Waters next filed a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255, which was denied on the merits. *Hinton Waters v. United States*, Civil Action No. 3:97-cv-302 (E.D. Tenn. July 22, 1999), *certificate of appealability denied*, No. 99-6300

(6th Cir. April 13, 2000). He then sought his release from custody pursuant to writs of *audita querela* and/or error *coram nobis*, which were denied. *Hinton Waters v. United States*, Civil Action No. 3:04-cv-37 (E.D. Tenn. Jan. 23, 2005), *aff'd*, No. 04-5368 (6th Cir. Sept. 14, 2005), *cert. denied*, 549 U.S. 983 (2006).

Waters has now filed another petition for writ of *audita querela*, in which he raises an issue that was raised and rejected in his prior petition for writ of *audita querela*. For the reasons stated by this court in the denial of the prior petition, and affirmed by the Sixth Circuit, the pending petition for writ of *audita querela* will be **DENIED** and this action **DISMISSED**. A certificate of appealability **SHALL NOT ISSUE** in this action. 28 U.S.C. § 2253(c).

In addition to the above, this court has carefully reviewed this case pursuant to 28 U.S.C. § 1915(a) and hereby **CERTIFIES** that any appeal from this action would not be taken in good faith and would be totally frivolous. Therefore, this court hereby **DENIES** the petitioner leave to proceed *in forma pauperis* on appeal. See Rule 24 of the Federal Rules of Appellate Procedure.

AN APPROPRIATE ORDER WILL ENTER.

s/ Leon Jordan
United States District Judge